

Request for Proposals

Environmental Review Services for Oxboro Lake Maintenance Project For The City of Bloomington, MN

Due: 11:00 A.M., Thursday, April 8, 2021

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I. Purpose (Introduction) –

The City of Bloomington is seeking proposals from qualified individuals, firms, partnerships, and corporations having specific experience in the area(s) of Environmental Review and interested in providing Environmental Review Documentation services to the City.

II. Objective

The objective is to enter into a contract with the selected Proposer to initiate and complete the Environmental Review process per MN Administrative Rules, Chapter 4410 for the City of Bloomington's 2021 Oxboro Lake Maintenance Project.

III. Definitions

ADDENDA – Written instruments issued by the City prior to the date for receipt of Proposals which modify or interpret the Request for Proposal (RFP) by addition, deletions, clarification or corrections.

CITY - The City of Bloomington, a political subdivision of the State of Minnesota.

CONTRACT - The written agreement between the City and the Proposer covering the performance of the Service. The contract documents consist of the RFP, submitted Proposal, including any diagrams, blueprints, addenda, and a form of agreement between the City and the Proposer.

CONTRACTOR - The qualified Proposer that is awarded the Contract to provide environmental review services for the City of Bloomington related to the 2021 Oxboro Lake Maintenance Project.

PROJECT – environmental review services for the City of Bloomington related to the 2021 Oxboro Lake Maintenance Project.

PROPOSAL – A complete and properly signed Proposal to provide goods, commodities, labor or services for the sum stated and submitted in accordance with the RFP.

PROPOSER - The person, Consultant, Contractor, vendor, corporation or other entity submitting a Proposal on items listed in the RFP and thereby agreeing to meet the terms and conditions of the RFP if awarded the contract.

RFP - This document, entitled "Request for Proposals, Environmental Review Services for Oxboro Lake Maintenance Project, for the City of Bloomington, MN," which includes all items listed in the Table of Contents on page 2 and any Addenda.

RFP SUBMISSION – All of the documentation and information submitted through the RFP System in response to this request.

RFP SYSTEM – An online portal, Bids and Tenders, used to issue and receive RFP responses electronically.

IV. Background

Oxboro Lake is located on city-owned property (9301 Syndicate Ave S) that is primarily surrounded by private property. With the exception of two commercial properties adjacent to the southwest corner of the lake, the surrounding properties contain single-family homes with lots that extend, generally, to the top of slope at the shoreline. The proposed project will consist of constructing access roads to remove accumulated sediment from the lake bottom. The amount of sediment will range between 65,000 and 100,000 cubic yards. Maintenance of existing storm sewer outfalls and restoration of shoreline will also be included as part of the project.

V. Inquiries

It shall be the responsibility of the Proposer to inquire about any portion of the RFP that is not fully understood or susceptible to more than one (1) interpretation. Written inquiries are required. Questions related to this RFP are to be submitted to the Engineering representative through the RFP System only by clicking on the “Submit a Question” button for this specific opportunity at least seven (7) calendar days prior to the RFP closing.

All inquiries, questions, or clarifications must be submitted not later than seven (7) calendar days prior to the due date of this RFP. Those inquiries, questions, or clarifications submitted after this date will not be answered. All inquiries will be responded to within three (3) business days. Inquiries and the City’s response will be provided to all Proposers who acquired an RFP.

Do not ask other City personnel questions, as information gathered from other sources may not reflect the City’s position or interest and could result in disqualification.

The City reserves the right to contact Proposers individually for the purpose of clarifying Proposals.

Addenda will be available in the RFP System to all Proposers who have registered to receive the RFP documents. Proposers shall acknowledge receipt of any addenda through the RFP System by checking a box for each addenda and any applicable attachment.

- a. It is the responsibility of the Proposer to have received all Addenda that are issued. Proposers should check online at <https://bloomingtonmn.bidsandtenders.net/Module/Tenders/en> prior to submitting their Proposal.

- b. Proposals submitted prior to the RFP closing time and date will be withdrawn automatically by the RFP System if additional Addenda are issued. RFP status will change to an incomplete status and the RFP will be withdrawn. The Proposers can view this status change in the RFP System.

The Proposer is solely responsible to:

- a. make any required adjustments to their RFP; and
- b. acknowledge the addenda; and
- c. Ensure the re-submitted RFP is RECEIVED by the RFP System no later than the stated RFP closing time and date.

VI. Determination of Responsibility

The minimum criteria used to determine responsibility of each PROPOSER include:

- Successful experience in initiating and completing the Environmental Review process for pond maintenance projects
- Successful experience in communicating with and documenting correspondence with reviewers
- References who are familiar with the firm's demonstrated experience with similar projects
- Knowledge and experience with pond maintenance projects
- Project staff experience as related to this Project

VII. Projected Timetable

Issue Request for Proposals	March 26, 2021
Proposals Due	April 8, 2021
Evaluation of Proposals	April 12, 2021
Contract Negotiations	April 16, 2021
Contract Execution	April 30, 2021
Notice to Proceed	May 3, 2021

VIII. Scope of Services

The PROPOSER shall develop the necessary state and federal environmental documentation, a project memorandum (PM) or an environmental assessment (EA), if determined that an EA is necessary. This will include collecting of social, economic and environmental data related to the project scope and developing recommended mitigation measures.

Statement of Work

The City is seeking a PROPOSER to successfully deliver an Environmental Assessment Worksheet and associated Findings of Fact determining the need for a full Environmental Impact Statement. In the unlikely event that an EIS is required, the City will revise the project and/or contract for those services separately.

Project Deliverables

Project deliverables will include:

- One draft of the EAW for review by the CITY
- Distribution of the EAW for comment by all reviewers as specified in the Administrative Rules
- Collection of comments received
- Coordination with CITY for responses to comments received
- Finalization of EAW and issuance of Findings of Fact

The CITY will provide available documentation related to the PROJECT including:

- 60% construction plans
- Sediment testing results from 2011 and 2020 sampling

Project Schedule

The project shall be completed no later than September 17, 2021.

IX. Submittal Requirements

All Proposals shall be kept to a maximum eight (8) single-sided pages, in eleven (11) font size minimum, excluding the cover, and title sheets. Any project sheets, resumes, or other marketing materials may be included as an appendix to each Proposal. However, material contained in appendices may not be reviewed or considered. The cover letter, appendices, and pages acknowledging the receipt of addenda and the statement of non-collusion do not count towards the eight (8) page limit. Proposals need not include elaborate brochures, expensive bindings, etc.; however, legibility, clarity, conciseness, and completeness are essential.

The Proposals must include, at a minimum, and shall be organized according to the following outline:

- A. **Cover Letter:** Summarizes the key elements of the Proposal and outlines why your firm should be selected for this Service. The cover letter should identify the name, title, address, phone number, and email address of the person who will represent the Consultant in matters regarding the Proposal's content.

B. *Project Understanding:* Describe your understanding of the Service to be provided, identify issues or areas of concern to be addressed by the Service, outline the overall objectives of the Service, and summarize your approach to fulfilling the scope of services and deliverables. The Consultant is reminded to review the insurance certificate requirements listed in Section XVI – Sample Contract.

C. *Consultant Background and Experience:* Provide a brief description of your firm and any sub-consultants proposed as part of your team. Sub-consultants must be approved by the City in conjunction with each Proposal.

Identify and describe at least four (4) projects that your firm has completed that exemplify your firm's ability to complete this Service. Include client references for each project, listing a contact name, telephone number and email address. Include dates the work was performed and software used. The Consultants are to identify any clients and/or projects that may present a conflict of interest to providing the Services for the City as part of their Proposal.

D. *Project Team:* Provide short descriptions [one (1) to two (2) paragraphs] of key team members summarizing their experience and proposed role for this Service. Clearly identify who will lead the project team and who will be the main point of contact with City staff. Include an organizational chart of team members and sub-consultants. If the person identified as the project manager did not lead one (1) of the projects submitted under the Experience section, provide client references to support their project management capabilities.

E. *Scope of Work:* Clearly outline the tasks needed to complete each deliverable of the work outlined above. Include all substantive tasks and milestones outlined in this RFP. Identify key team members and project deliverables for each section of the Scope of Work. Identify tasks and responsibilities, if any, that are expected to be provided by the City.

F. *Project Schedule:* Prepare a work task flow chart that illustrates chronologically the firm's intent to reach major project milestones.

G. *Time/Cost Estimate:* Prepare a spreadsheet outlining anticipated time and cost, including all tasks defined in Section IX - Scope of Services. This spreadsheet should include time and costs for key team members, including both anticipated hours and hourly rates. Prepare an hourly breakdown for each task for proposed services that identifies all reimbursable expenses, such as mileage and meetings, associated with this Proposal. The Proposal must include a total not-to-exceed amount for the Service.

H. *Acknowledgement of Receipt of Addenda and Statement of Non-collusion:* Include pages regarding the receipt of any addenda and the Statement of Non-collusion. See Section XI and XVIII.

X. Submission of Proposal

Electronic RFP Submission only shall be received by the RFP System. Oral, facsimile, email, hard copy, or telephone Proposals are invalid and will not receive consideration.

Proposals shall be submitted prior the time and date indicated in the Formal Request for Proposal, or any extension thereof made by addendum. Proposals received after the time and date designated for receipt of Proposals will be returned unopened without being considered for award.

The Proposer shall assume full responsibility for timely submission designated for receipt of Proposals. Late Proposals are not permitted by the RFP System.

Timing of Proposal submission is based on when the Proposal is received by the RFP System, not when a Proposal is submitted, as Proposal transmission can be delayed due but not limited to file transfer size and transmission speed.

The closing time and date shall be determined by the RFP System's web clock.

The RFP System will send a confirmation email to the Proposer advising that their Proposal was submitted successfully. If you do not receive a confirmation email, contact Bids&Tenders support at support@bidsandtenders.ca

To ensure receipt of the latest information and updates via email regarding this RFP, or if a Proposer has obtained this RFP Document from a third party, the onus is on the Proposer to create a RFP System Proposer account and register for the opportunity.

Proposers may edit or withdraw their Proposal prior to the closing time and date. However, the Proposer is solely responsible to ensure the re-submitted Proposal is received by the RFP System no later than the stated closing time and date.

A person who is authorized to legally bind the responding Consultant must sign the Proposal. The Consultant shall acknowledge that the Proposal complies with any amendments, alterations or deletions to the RFP.

Any Proposal may be withdrawn or modified prior to the scheduled deadline for submitting Proposals. After the submittal deadline, Consultants may not modify, withdraw or cancel their Proposals for a minimum of ninety (90) days following that date

The City reserves the right to reject any or all Proposals or parts of Proposals, to accept part or all of Proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense than described in this RFP or the respondent's reply based on the component prices submitted.

The City reserves the right to waive irregularities in the Proposal content or to request supplemental information from Proposers.

The City is not responsible for any costs incurred by the responding Proposer in the preparation of the Proposal or for any other cost to the Proposer associated with responding to the RFP. No reimbursement will be made by the City for any costs incurred prior to a formal notice to proceed should an award of contract result from this solicitation. This RFP does not obligate the City to award a contract or complete any specific Project. The City reserves the right to cancel this solicitation or to change its scope if it is considered to be in the best interest of the City.

All design drawings, plans, and Proposals submitted in response to the RFP will be retained by the City and not returned.

Clarifications, Exceptions, and Addenda

The City reserves the right to contact Proposers individually for the purpose of clarifying Proposals.

Proposers may find instances where they are unable to provide services that meet all of the expectations defined in this RFP. In such cases, the Proposer should identify the areas where they feel the requested service or product is not available, deviates from the specific requests, or is deemed to be an unwise or unwarranted approach. The Proposer will describe exceptions to the RFP and identify their impact to the City, including, but not limited to, workarounds, reductions in performance, capacity, flexibility, accuracy, and ultimately cost and value. The City reserves the right to disallow exceptions it finds are not in the best interests of the City.

Any and all exceptions to the requirements of this RFP must be identified and fully explained in the submitted Proposal.

Any addenda to this RFP will be issued and acknowledged in the RFP system. No oral statements, explanations, or commitments shall be provided.

XI. Proposal Evaluations (Evaluation Criteria)

Proposal(s) will be examined to eliminate those which are clearly non-responsive to the stated requirements. Proposals will be reviewed and a recommendation of award made based on the Proposal most closely meeting the needs outlined in this RFP and providing the best value for the City.

The criteria the City will use to select a Proposer to provide these services is described below. After the evaluation of experience, project approach, and cost, a shortlist of Proposers will be created from the top ranked Proposals. Interviews will only be conducted with the Proposers on the shortlist.

Weight	Component	Description
40%	Cost	Ability to offer competitive pricing in direct correlation to RFP requirements.
30%	Value/Fit	Ability to (provide services as specified). Proven ability complete the work as proposed and accepted by the City.
30%	Demonstrated Related Experience	<p>The specific items the PROPOSER will be rated on include:</p> <ul style="list-style-type: none"> • Successful experience in initiating and completing the Environmental Review process for pond maintenance projects • Successful experience in documenting • References who are familiar with the firm's demonstrated experience with similar projects • Knowledge and experience with pond maintenance projects • Project staff experience as related to this Project

The Consultant submitting the selected Proposal will be required to sign an agreement with the City based on their Proposal using the attached format (See Section XIX – City Sample Contract) which is provided for information and advanced coordination. All parties who submit Proposals will be notified by email of the City's decision regarding selection. No results for solicitation will be released until a contract has been executed with awarded proposer.

XII. Contract Award

A. Negotiations and Contract Execution

The City reserves the right to negotiate the final terms and conditions of the contract to be executed. In the event the City and the Proposer are unable to agree upon all contract provisions, the City reserves the right to cease negotiations, and to move on to select another proposer, or to reject all Proposals.

B. Contracting Ethics

1. No elected officials or employees of the City who exercise any responsibility in the review, approval, or implementation of the Proposal shall participate in any decision which affects his or her direct or indirect financial interests.
2. It is a breach of ethical standards for any person to offer, give, or agree to give any City employee or elected officials person, or for any City employee or Council person to solicit, demand, accept, or agree to accept from another person or agency, a gratuity or an offer of employment whenever a reasonable prudent

person would conclude that such consideration was motivated by an individual, group, or corporate desire to obtain special, preferential, or more favorable treatment than is normally accorded the general public.

3. The Proposer shall not assign any interest in this contract and shall not transfer any interest in the same without the prior written consent of the City.
4. The Proposer shall not accept any private client or project that may place it in ethical conflict during its representation of the City.

XIII. Other Information

The project shall be completed no later than September 17, 2021.

XIV. Disposition of Responses

All materials submitted in response to this RFP will become the property of the City and will become public record after the evaluation process is completed and an award decision made. If the Proposer submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes 13.37, the Proposer must:

- Clearly mark all trade secret materials in its response at the time the response is submitted by indicating in writing the specific page number(s) and paragraph(s) classified as trade secret and therefore nonpublic.
- Include a statement with its response justifying the trade secret designation for each item and defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the City, its agents and employees, from any judgments or damages awarded against the City in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the City's award of a contract. In submitting a response to this RFP, the Proposer agrees that this indemnification survives as long as the trade secret materials are in possession of the City. The City is required to keep all the basic documents related to its contracts, including responses to the RFP for a minimum of seven (7) years.

The City will not consider the prices submitted by the Proposer to be proprietary or trade secret materials.

Responses to this RFP will not be open for public review until the City decides to pursue a contract and that contract is executed.

XV. Insurance Requirements

Proposer shall maintain insurance coverage, naming City as additional insured, as described in Section XVI. The Proposer shall not commence work until all insurance has been obtained and copies have been filed and accepted by the City. The Proposer shall be responsible for maintaining a valid certificate of insurance throughout the term of the Contract, as required in the sample agreement.

XVI. Contract Terms and Conditions:

A sample of the City's contract is included in Section XIX. The clauses included in the sample contract will be included in the contract between the City and the Proposer that has been chosen to provide the Services described herein and in the Proposers' Proposal. Any exceptions to the contract terms and conditions included in Section XIX must be identified in the submitted Proposal.

XVII. Statement of Non-Collusion

The following statement shall be made as part of the Proposer's proposal.

I affirm that I am the Proposer, a partner of the consulting Proposer, or an officer or employee of the Proposer's corporation with authority to sign on the Proposer's behalf.

I also affirm that the attached has been compiled independently and without collusion or agreement, or understanding with any other proposer designed to limit competition.

I hereby affirm that the contents of this Proposal have not been communicated by the Proposer or its agent to any person not an employee or agent of the City.

Signed

Print Name

Title

Date

Proposer Name

Address

City / State / Zip Code

Telephone and Fax Numbers

Email Address

I certify this Proposal complies with the RFP and conditions issued by the City except as clearly marked in the attached copy.

Date	
Name	
Authorized Signature	
Title	
Company Name	
Address	
City, State	
Zip Code	
Telephone Number	
Fax Number	
E-mail	

XVIII. Sample Contract

PROFESSIONAL SERVICES AGREEMENT

INSERT CONSULTANT'S LEGAL NAME –ALL CAPS/BOLD

THIS AGREEMENT is made on _____ (“Effective Date”) by and between **INSERT CONSULTANT'S LEGAL NAME – ALL CAPS/BOLD**, a **choose type of business from drop down** located at **enter Consultant's registered business address** (“Consultant”), and the **CITY OF BLOOMINGTON, MINNESOTA**, a Minnesota municipal corporation located at 1800 West Old Shakopee Road, Bloomington, Minnesota 55431-3027 (“City”):

RECITALS

- A. Consultant is engaged in the business of providing professional **enter type of professional services the Consultant will provide** services.
- B. The City desires to **enter specific services the City wants the Consultant to provide**.
- C. Consultant represents that it has the professional expertise and capabilities to provide the City with the requested professional services.
- D. City desires to engage Consultant to provide the services described in this Agreement and Consultant is willing to provide such services on the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions expressed in this Agreement, the City and Consultant agree as follows:

AGREEMENT

- 1. **Services to be Provided.** Consultant agrees to provide City with professional **enter type of professional services the Consultant will provide – same as A. above** services as described in Consultant's Scope of Services attached to this Agreement as Exhibit A or any supplemental letter agreements, or both, entered into between the City and Consultant (the “Services”). The Services referenced in the attached Exhibit A or any supplemental letter agreements shall be incorporated into this Agreement by reference. All Services shall be provided in a manner consistent with the level of care and skill ordinarily exercised by professionals currently providing similar services.
- 2. **Time for Completion.** This Agreement shall remain in force and effect commencing from Effective Date and continuing until the earlier of **enter completion date of contract** or completion of the project unless terminated by the City or amended pursuant to the Agreement.

3. **Consideration.** The consideration, which City shall pay to Consultant and shall not exceed \$~~enter total \$ amount of contract~~.00, for both the Services performed by Consultant and the expenses incurred by Consultant in performing the Services, shall be as set forth in Exhibit A and incorporated into this Agreement. City shall make progress payments, based on monthly invoices from Consultant. City's payment shall be made within 30 days after Consultant's statement. Consultant's statement shall contain a detailed list of project labor and hours, rates, titles, and amounts undertaken by the Consultant during that billing period.
4. **Expense Reimbursement.** The Consultant will not be compensated separately for necessary incidental expenses. All expenses of the Consultant shall be built into the Consultant's fixed compensation rates, unless reimbursement is provided for an expense that received the prior written approval of the City, which approval may be provided via electronic mail.
5. **Approvals.** The Consultant will secure the City's written approval before making any expenditures, purchases, or commitments on the City's behalf beyond those listed in the Services. The City's approval may be provided via electronic mail.
6. **Termination.** Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:
 - a. The parties, by mutual written agreement, may terminate this Agreement at any time;
 - b. Consultant may terminate this Agreement in the event of a breach of the Agreement by the City upon providing thirty (30) days' written notice to the City;
 - c. The City may terminate this Agreement at any time at its option, for any reason or no reason at all; or
 - d. City may terminate this Agreement immediately upon Consultant's failure to have in force any insurance required by this Agreement.In the event of a termination, City shall pay Consultant for Services performed to the date of termination and for all costs or other expenses incurred prior to the date of termination.
7. **Amendments.** No amendments may be made to this Agreement except in writing signed by both parties.
8. **Remedies.** In the event of a termination of this Agreement by City because of a breach by Consultant, City may complete the Services either by itself or by contract with other persons or entities, or any combination thereof. The foregoing remedies provided to the City for breach of this Agreement by Consultant shall not be exclusive. City shall be entitled to exercise any one or more other legal or equitable remedies available because of Consultant's breach.
9. **Records/Inspection.** Pursuant to Minnesota Statutes § 16C.05, Subd. 5, the Consultant agrees that the books, records, documents, and accounting procedures and practices of the Consultant, that are relevant to the contract or transaction, are subject to examination by the City and the state auditor or legislative auditor for a minimum of six years. The

Consultant shall maintain such records for a minimum of six years after final payment. The parties agree that this obligation will survive the completion or termination of this Agreement.

10. **Indemnification.** To the fullest extent permitted by law, the Consultant, and the Consultant's successors or assigns, agree to protect, defend, indemnify, save, and hold harmless the City, its officers, officials, agents, volunteers, and employees from any and all claims; lawsuits; causes of actions of any kind, nature, or character; damages; losses; or the costs, disbursements, and expenses of defending the same, including but not limited to attorneys' fees, professional services, and other technical, administrative or professional assistance resulting from or arising out of Consultant's (or its subcontractors, agents, volunteers, members, invitees, representatives, or employees) performance of the duties required by or arising from this Agreement, or caused in whole or in part by any negligent act or omission or willful misconduct, or arising out of the failure to obtain or maintain the insurance required by this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled. The parties agree that these indemnification obligations will survive the completion or termination of this Agreement.
11. **Insurance.** Consultant shall maintain reasonable insurance coverage throughout this Agreement. Consultant agrees that before any work related to the approved Project can be performed, Consultant shall maintain at a minimum: Worker's Compensation Insurance as required by Minnesota Statutes, Section 176.181; Business Auto Liability in an amount not less than \$1,000,000.00 per occurrence; Professional Liability in an amount not less than \$1,000,000.00 per occurrence; and Commercial General Liability in an amount of not less than \$1,500,000.00 per occurrence for bodily injury or death arising out of each occurrence, and \$1,500,000.00 per occurrence for property damage. To meet the Commercial General Liability and Business Auto Liability requirements, the Consultant may use a combination of Excess and Umbrella coverage. The Consultant shall provide the City with a current certificate of insurance including the following language: "The City of Bloomington is named as an additional insured with respect to the commercial general liability, business automobile liability and umbrella or excess liability, as required by the contract. The umbrella or excess liability policy follows form on all underlying coverages." Such certificate of liability insurance shall list the City as an additional insured and contain a statement that such policies of insurance shall not be canceled or amended unless thirty (30) days' written notice is provided to the City, or ten (10) days' written notice in the case of non-payment.
12. **Subcontracting.** Neither the City nor the Consultant shall assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in the Agreement without the written consent of the other except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Consultant from employing such independent consultants, associates, and subcontractors, as it may deem

appropriate to assist it in the performance of services required by this Agreement. Any instrument in violation of this provision is null and void.

13. **Assignment.** Neither City nor Consultant shall assign this Agreement or any rights under or interest in this Agreement, in whole or in part, without the other party's prior written consent. Any assignment in violation of this provision is null and void.
14. **Independent Contractor.** Consultant shall be deemed an independent contractor. Consultant's duties will be performed with the understanding that Consultant has special expertise as to the services which Consultant is to perform and is customarily engaged in the independent performance of the same or similar services for others. All required equipment and personnel shall be provided or contracted for by Consultant. The manner in which the services are performed shall be controlled by Consultant; however, the nature of the services and the results to be achieved shall be specified by City. The parties agree that this is not a joint venture and the parties are not co-partners. Consultant is not to be deemed an employee or agent of City and has no authority to make any binding commitments or obligations on behalf of City except to the extent expressly provided in this Agreement. All services provided by the Consultant pursuant to this Agreement shall be provided by the Consultant as an independent contractor and not as an employee of the City for any purpose, including but not limited to: income tax withholding, workers' compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.
15. **Compliance with Laws.** Consultant shall exercise due professional care to comply with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the date Consultant agrees to provide the applicable services detailed in Exhibit A or any supplemental letter agreement. Consultant's guests, invitees, members, officers, officials, agents, employees, volunteers, representatives, and subcontractors shall abide by the City's policies prohibiting sexual harassment, firearms, and smoking, as well as all other reasonable work rules, safety rules, or policies regulating the conduct of persons on City property, at all times while performing duties pursuant to this Agreement. Consultant agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by the City.
16. **Entire Agreement.** This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between the City and the Consultant, and supersedes any other written or oral agreements between the City and the Consultant. This Agreement can only be modified in writing signed by the City and the Consultant. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
17. **Third Party Rights.** The parties to this Agreement do not intend to confer on any third party any rights under this Agreement.

18. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Hennepin County, Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.
19. **Conflict of Interest.** The Consultant shall use reasonable care to avoid conflicts of interest and appearances of impropriety in representation of the City. In the event of a conflict of interest, Consultant shall advise the City and either secure a waiver of the conflict or advise the City that it will be unable to provide the requested services.
20. **Work Products and Ownership of Documents.** All records, information, materials and other work products, including, but not limited to the completed reports, drawings, plans, and specifications prepared and developed in connection with the provision of services pursuant to this Agreement shall become the property of the City, but reproductions of such records, information, materials and other work products in whole or in part may be retained by the Consultant. Regardless of when such information was provided, the Consultant agrees that it will not disclose for any purpose any information the Consultant has obtained arising out of or related to this Agreement, except as authorized by the City or as required by law. These obligations survive the termination of this Agreement.
21. **Agreement Not Exclusive.** The City retains the right to hire other professional **enter type of professional services the Consultant will provide – same as A. above** service providers for other matters, in the City’s sole discretion.
22. **Data Practices Act Compliance.** Any and all data provided to the Consultant, received from the Consultant, created, collected, received, stored, used, maintained, or disseminated by the Consultant pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. Consultant agrees to notify the City within three (3) business days if it receives a data request from a third party. This paragraph does not create a duty on the part of the Consultant to provide access to public data to the public if the public data are available from the City, except as required by the terms of this Agreement. These obligations survive the termination of this Agreement.
23. **No Discrimination.** Consultant agrees not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement. Consultant agrees to comply with Americans with Disabilities Act as amended (“ADA”), Section 504 of the Rehabilitation Act of 1973, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A. Consultant agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of these laws by the Consultant or its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and subcontractors. Upon request, the Consultant shall provide

accommodation to allow individuals with disabilities to participate in all services under this Agreement. Consultant agrees to utilize their own auxiliary aid or service in order to comply with ADA requirements for effective communication with people with disabilities.

24. **Authorized Agents.** The City's authorized agent for purposes of administration of this contract is **enter City's department contact for this contract**, the **enter title of City contact** of the City, or designee. The Consultant's authorized agent for purposes of administration of this contract is **enter Consultant's contact name**, who shall perform or supervise the performance of all Services.
25. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:
- Consultant: **enter Consultant's address and contact information**;
- City: City of Bloomington, 1800 West Old Shakopee Road, Bloomington, MN 55431,
Attn: **enter City's contact name**; @bloomingtonmn.gov; 952-563-_____;
- or such other contact information as either party may provide to the other by notice given in accordance with this provision.
26. **Waiver.** No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.
27. **Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit or affect the scope and intent of this Agreement.
28. **Mediation.** Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation at the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, Minnesota 55405. In the event mediation is unsuccessful, either party may exercise its legal or equitable rights.
29. **Payment of Subcontractors.** Consultant agrees that it must pay any subcontractor within ten (10) days of the prime contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. Consultant agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime

contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

30. **Publicity.** City and Consultant shall develop language to use when discussing the Services. Consultant agrees that any publicity regarding the Services or the subject matter of this Agreement must not be released unless it complies with the approved language. Consultant must not use the City's logo or state that the City endorses its services without the City's advanced written approval.
31. **Severability.** In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.
32. **Signatory.** Each person executing this Agreement ("Signatory") represents and warrants that he or she is duly authorized. In the event the Consultant did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of the Consultant, described in this Agreement, personally.
33. **Counterparts and Electronic Communication.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be transmitted by electronic mail in portable document format ("pdf") and signatures appearing on electronic mail instruments shall be treated as original signatures.
34. **Recitals.** City and the Consultant agree that the Recitals are true and correct and are fully incorporated into this Agreement.

[The balance of this page left blank intentionally.]

IN WITNESS WHEREOF, the City and the Consultant have caused this Professional Services Agreement to be executed by their duly authorized representatives in duplicate on the respective dates indicated below.

**CITY OF BLOOMINGTON,
MINNESOTA**

DATED: _____ BY: _____
Tim Busse
Its: Mayor

DATED: _____ BY: _____
James D. Verbrugge
Its: City Manager

Reviewed and approved by the City Attorney.

Melissa J. Manderschied

CONSULTANT

**INSERT CONSULTANT'S LEGAL
NAME –ALL CAPS/BOLD**

DATED: _____ BY: _____
Its: _____

EXHIBIT A TO AGREEMENT WITH
INSERT CONSULTANT'S LEGAL NAME –ALL CAPS/BOLD

SCOPE OF SERVICES